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In the

Supreme Court of the United States

October Term 1957

No. 805

CLARENCE RAYMOND COLLIER,
Appellant

v.

L. O. MILLER AND B. H. TIGNOR,
Appellees

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

The Petition for Writ of Certiorari Does Not Comply With Paragraph (f) of Rule 23 of This Court

Paragraph (f) of Rule 23 of the Rules of this Court requires that

> "* * * the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary

> thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will *show that the federal question was timely and properly raised* so as to give this court jurisdiction to review the judgment on writ of certiorari." (Italics supplied)

Neither Petitioner's "Statement of the Case", which is set forth on the third and fourth pages of the Petition, nor any other portion of his Petition, specifies the stage in the proceedings below at which, or the manner in which, the supposed federal question was raised. Nowhere does Petitioner make any quotation from the Record, or any summary thereof or reference thereto, showing that such federal question "was timely and properly raised". On the contrary, the Petition as a whole correctly indicates that the presence of a federal question, if suspected, was never suggested in either the court of first instance or the appellate court below.

II.

The Petition Shows on Its Face That No Substantial Federal Question Is Involved

The substance of Petitioner's complaint is that the question of his right to recover against the defendants should have been submitted to the jury:

> "It is sincerely urged that reasonable minded men could differ and that it was a question of fact for the jury to determine whether the defendants had probable cause to believe that Mr. Collier on May 2, 1956, had wilfully failed or refused to file his state income tax return for 1956 based on earnings of 1955 * * *" (Petition, at pages 11-12)

If it was error to direct a verdict for the defendants, it was at most an erroneous application of the laws of Virginia determining which questions shall be decided by the court and which by the jury. Virginia is perfectly free to eliminate juries altogether in civil cases. *Walker* v. *Sauvinet,* 92 U. S. 90; *Hardware Dealers Mutual Fire Insurance Company of Wisconsin* v. *Glidden Co.,* 284 U. S. 151. Since the state may constitutionally permit the trial judge to decide all civil cases, under all conceivable evidence, without intervention of a jury, *a fortiori* it may permit him to do so on the evidence in Petitioner's case.

Furthermore under any view of the Petition it asserts only that Virginia has failed to afford Petitioner a legal right of action against other private individuals on a given state of facts. The Federal Constitution has never been, and we submit never can be construed to require any State to create or preserve any such right between one citizen and another. We can conceive of no federal constitutional limitation upon the power of any state to abolish altogether the common law action of malicious prosecution and all of its modern descendants in every form.

Conclusion

For the reasons hereinabove set forth, it is respectfully submitted that certiorari should be denied.

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